

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK J GOSSETT,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. 3:24-cv-05501-TMC

ORDER DENYING MOTION FOR RELIEF  
FROM JUDGMENT

**I. ORDER**

Before the Court is Petitioner Mark J. Gossett's second motion for relief from judgment. Dkt. 20. After reviewing the motion and the remaining record, the Court DENIES the motion.

On August 13, 2024, the Court dismissed Mr. Gossett's federal habeas petition without prejudice in its order adopting the Report and Recommendation of U.S. Magistrate Judge David

1 W. Christel. Dkt. 15. The Court agreed with Judge Christel that Mr. Gossett's petition should be  
2 dismissed without prejudice for lack of jurisdiction as a second or successive petition. *Id.* at 2.  
3 The Court entered judgment the same day. Dkt. 16. On September 27, 2024, the Court denied  
4 Mr. Gossett's first motion for relief from judgment under Federal Rule of Civil Procedure  
5 60(b)(4), which argued that the judgment was void because the Court had characterized his  
6 habeas petition as one brought under 28 U.S.C. § 2254. Dkt. 18.

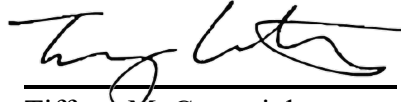
7 Mr. Gossett has now moved again for relief under Rule 60(b)(4), which allows the Court  
8 to grant relief from a final judgment if "the judgment is void." Fed. R. Civ. P. 60(b)(4). The  
9 Court will consider the merits of Mr. Gossett's motion because it attacks an alleged defect in the  
10 integrity of his habeas proceedings and is not itself a disguised second or successive habeas  
11 petition. *See Gonzalez v. Crosby*, 545 U.S. 524, 530–33 (2005); *United States v. Washington*,  
12 653 F.3d 1057, 1063 (9th Cir. 2011).

13 Mr. Gossett argues that the judgment is void because the Court failed to apply "the  
14 successive analysis set forth in *Sanders v. United States*, 373 U.S. 1, 83 S. Ct. 1068 (1963)." Dkt. 20 at 1. This argument is unpersuasive. The Magistrate Judge correctly applied, and this  
15 Court adopted, the standard for determining whether a habeas petition is second or successive  
16 under 28 U.S.C. § 2244. And even if Mr. Gossett's argument had merit, "a judgment is not void  
17 merely because it is erroneous." *In re Center Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir.  
18 1985). A judgment is void for purposes of Rule 60(b)(4) "only if the court that considered it  
19 lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound,  
20 or acted in a manner inconsistent with due process of law." *United States v. Berke*, 170 F.3d 882,  
21 883 (9th Cir. 1999). Mr. Gossett's argument does not meet this standard.

## 22 II. CONCLUSION

1 For the reasons explained above, the Court DENIES the motion for relief from judgment  
2 (Dkt. 20). The Court also DENIES a certificate of appealability.

3 Dated this 8<sup>th</sup> day of November, 2024.

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5 Tiffany M. Cartwright  
6 United States District Judge  
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